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| 10/613,134 | 07/03/2003 | Zachary A. Lundin | | 7199 |

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EXAMINER

BLAKE, CAROLYN T

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3724

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/613,134

Applicant(s)

LUNDIN, ZACHARY A.

Examiner

Carolyn T. Blake

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 11 is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the appeal brief filed on May 16, 2005, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Specification

2. The disclosure is objected to because of the following informalities: "lineal" (page 7, line 24) should be changed to - -linear- -. Appropriate correction is required. All further instances should also be corrected.

Claim Objections

3. Claim 1 is objected to because of the following informalities: lineal (lines 7 and 10) should be changed to - -linear- -. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Dailey (2,048,999).

Regarding claim 1, Dailey discloses a cutting template capable of being used for cutting a plurality of meat pieces from a meat section all of which are precisely similar in size and weight, said cutting template comprising: a graspable handle (20) composed of a planar forefinger abutting section (side of handle 20) and a planar thumb rest section (top of 20) which are separated by a crease, said forefinger abutting section being deflected at said crease at an angle to said thumb rest section; a guide plate (16/17) integrally attached to said thumb rest section at an elongated linear bend, said guide plate being elongated and extending transversely from said thumb rest section; and a first guide bar (18) attached to said guide plate directly adjacent said linear bend and extending outwardly from said guide plate, whereby said guide plate is to be placed against an edge of the meat section with said first guide bar resting on an upper surface of the meat section with the operator to then move a cutting instrument around an exterior edge of said guide bar to cause severing of a first said meat piece with the procedure to then be repeated to obtain said meat pieces.

Regarding claim 2, Dailey discloses means (pointed tip of 18) for fixing a position of said guide bar (18) which is connected to said guide bar, whereby said means

causes said guide bar to be fixed in position on the meat section prior to severing of the meat piece.

Regarding claim 3 Dailey discloses said means (pointed tip of 18) comprises a structure that impales the meat section.

6. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Stokes.

Regarding claim 1, Stokes discloses a cutting template capable of being used for cutting a plurality of meat pieces from a meat section all of which are precisely similar in size and weight, said cutting template comprising: a graspable handle (16) composed of a planar forefinger abutting section (side of handle 16) and a planar thumb rest section (top of 16) which are separated by a crease, said forefinger abutting section being deflected at said crease at an angle to said thumb rest section; a guide plate (20) integrally attached to said thumb reset section at an elongated linear bend, said guide plate being elongated and extending transversely from said thumb rest section; and a first guide bar (10) attached to said guide plate directly adjacent said linear bend and extending outwardly from said guide plate, whereby said guide plate is to be placed against an edge of the meat section with said first guide bar resting on an upper surface of the meat section with the operator to then move a cutting instrument around an exterior edge of said guide bar to cause severing of a first said meat piece with the procedure to then be repeated to obtain said meat pieces.

Regarding claim 2, Stokes discloses means (32) for fixing a position of said guide bar (10) which is connected to said guide bar, whereby said means causes said guide bar to be fixed in position on the meat section prior to severing of the meat piece.

Regarding claim 3, Stokes discloses said means (32) comprises a structure that impales the meat section.

Regarding claim 4, Stokes discloses said means (32) comprises a row of sharply pointed saw teeth mounted to said guide bar.

7. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Mikulas (3,074,449).

Regarding claim 1, Mikulas discloses a cutting template capable of being used for cutting a plurality of meat pieces from a meat section all of which are precisely similar in size and weight, said cutting template comprising: a graspable handle composed of a planar forefinger abutting section (22) and a planar thumb rest section (20) which are separated by a crease, said forefinger abutting section being deflected at said crease at an angle to said thumb rest section; a guide plate (18) integrally attached to said thumb rest section at an elongated linear bend, said guide plate being elongated and extending transversely from said thumb rest section; and a first guide bar (18') attached to said guide plate directly adjacent said linear bend and extending outwardly from said guide plate, whereby said guide plate is to be placed against an edge of the meat section with said first guide bar resting on an upper surface of the meat section with the operator to then move a cutting instrument around an exterior edge of said guide bar to cause severing of a first said meat piece with the procedure to then be repeated to obtain said meat pieces.

Regarding claim 2, Mikulas discloses means (edge of 18') for fixing a position of said guide bar (18') which is connected to said guide bar, whereby said means causes

said guide bar to be fixed in position on the meat section prior to severing of the meat piece.

Regarding claim 3, Mikulas discloses said means (edge of 18') comprises a structure that impales the meat section.

8. Claims 1-3 are further rejected under 35 U.S.C. 102(b) as being anticipated by an alternative interpretation of Mikulas (3,074,449).

Regarding claim 1, Mikulas discloses a cutting template capable of being used for cutting a plurality of meat pieces from a meat section all of which are precisely similar in size and weight, said cutting template comprising: a graspable handle composed of a planar forefinger abutting section (18') and a planar thumb rest section (18) which are separated by a crease, said forefinger abutting section being deflected at said crease at an angle to said thumb rest section; a guide plate (20) integrally attached to said thumb rest section at an elongated linear bend, said guide plate being elongated and extending transversely from said thumb rest section; and a first guide bar (22) attached to said guide plate directly adjacent said linear bend and extending outwardly from said guide plate, whereby said guide plate is to be placed against an edge of the meat section with said first guide bar resting on an upper surface of the meat section with the operator to then move a cutting instrument around an exterior edge of said guide bar to cause severing of a first said meat piece with the procedure to then be repeated to obtain said meat pieces.

Regarding claim 2, Mikulas discloses means (edge of 22) for fixing a position of said guide bar (22) which is connected to said guide bar, whereby said means causes

said guide bar to be fixed in position on the meat section prior to severing of the meat piece.

9. Regarding claim 3, Mikulas discloses said means (edge of 22) comprises a structure that impales the meat section.

10. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Dustrude (3,191,648).

Regarding claim 1, Dustrude discloses a cutting template (FIG 4) capable of being used for cutting a plurality of meat pieces from a meat section all of which are precisely similar in size and weight, said cutting template comprising: a graspable handle composed of a planar forefinger abutting section (30) and a planar thumb rest section (28) which are separated by a crease, said forefinger abutting section being deflected at said crease at an angle to said thumb rest section; a guide plate (22) integrally attached to said thumb rest section at an elongated linear bend, said guide plate being elongated and extending transversely from said thumb rest section; and a first guide bar (28) attached to said guide plate directly adjacent said linear bend and extending outwardly from said guide plate, whereby said guide plate is to be placed against an edge of the meat section with said first guide bar resting on an upper surface of the meat section with the operator to then move a cutting instrument around an exterior edge of said guide bar to cause severing of a first said meat piece with the procedure to then be repeated to obtain said meat pieces.

Regarding claim 2, Dustrude discloses means (30) for fixing a position of said guide bar (28) which is connected to said guide bar, whereby said means causes said guide bar to be fixed in position on the meat section prior to severing of the meat piece.

Regarding claim 3, Dustrude discloses said means (30) comprises a structure that impales the meat section.

11. Claims 1-5 are further rejected under 35 U.S.C. 102(b) as being anticipated by an alternative interpretation of Mikulas (3,074,449).

Regarding claim 1, Mikulas discloses a cutting template (FIG 4) capable of being used for cutting a plurality of meat pieces from a meat section all of which are precisely similar in size and weight, said cutting template comprising: a graspable handle composed of a planar forefinger abutting section (top of 68) and a planar thumb rest section (side of 68) which are separated by a crease, said forefinger abutting section being deflected at said crease at an angle to said thumb rest section; a guide plate (50) integrally attached to said thumb reset section at an elongated linear bend, said guide plate being elongated and extending transversely from said thumb rest section; and a first guide bar (48) attached to said guide plate directly adjacent said linear bend and extending outwardly from said guide plate, whereby said guide plate is to be placed against an edge of the meat section with said first guide bar resting on an upper surface of the meat section with the operator to then move a cutting instrument around an exterior edge of said guide bar to cause severing of a first said meat piece with the procedure to then be repeated to obtain said meat pieces.

Regarding claim 2, Mikulas discloses means (22') for fixing a position of said guide bar (48) which is connected to said guide bar, whereby said means causes said guide bar to be fixed in position on the meat section prior to severing of the meat piece.

Regarding claim 3, Mikulas discloses said means (22') comprises a structure that impales the meat section.

Regarding claim 4, Mikulas discloses said means (22') comprising a row of sharply pointed saw teeth mounted on said guide bar (48).

Regarding claim 5, Mikulas disclose said guide bar (48) encloses an open space which is closed at one side by said guide plate (50) and closed at the opposite side by said guide bar, during severing of the meat piece the meat piece is to be located directly adjacent said open space.

12. Claims 1-3 are further rejected under 35 U.S.C. 102(b) as being anticipated by an alternative interpretation of Hall (3,319,682).

Regarding claim 1, Hall discloses a cutting template capable of being used for cutting a plurality of meat pieces from a meat section all of which are precisely similar in size and weight, said cutting template comprising: a graspable handle composed of a planar forefinger abutting section (top of 21) and a planar thumb rest section (side of 21) which are separated by a crease, said forefinger abutting section being deflected at said crease at an angle to said thumb rest section; a guide plate (14) integrally attached to said thumb reset section at an elongated linear bend, said guide plate being elongated and extending transversely from said thumb rest section; and a first guide bar (15) attached to said guide plate directly adjacent said linear bend and extending outwardly

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from said guide plate, whereby said guide plate is to be placed against an edge of the meat section with said first guide bar resting on an upper surface of the meat section with the operator to then move a cutting instrument around an exterior edge of said guide bar to cause severing of a first said meat piece with the procedure to then be repeated to obtain said meat pieces.

Regarding claim 2, Hall discloses means (edge of 15) for fixing a position of said guide bar (14) which is connected to said guide bar, whereby said means causes said guide bar to be fixed in position on the meat section prior to severing of the meat piece.

Regarding claim 3, Hall discloses said means (edge of 15) comprises a structure that impales the meat section.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mikulas (interpretation 1). Mikulas discloses the angle is approximately 20 degrees, rather than 10 to 15 degrees. However, to vary the angle by five degrees would appear to be within the design of the invention, and the difference would not appear to deviate from the scope of the invention.

Response to Arguments

15. Applicant's arguments with respect to claims 2-5 and 11 have been considered but are moot in view of the new ground(s) of rejection.

Prosecution was reopened due to the argument that it is speculative the forefinger and thumb sections are planar.

It should be noted the references cited are capable of use as a cutting template as claimed. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). In the instant case, the references cited read on the structure of the claims, as thus the rejection is proper.

Applicant has applied a limited definition of the term "bar" in the arguments. The term does not have to refer to a long rod or shaft, but can also encompass any solid piece or block of material that is usually longer than wide.

Finally, Applicant's claims are so broad that they are reading on several references, exemplified by those applied above. It is the Examiner's opinion that the disclosed invention is patentable, but Applicant has not yet claimed the appropriate structure so that is so.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sariham (D 487,002) and Stiles (2004/0255975) disclose devices capable of use as meat templates.

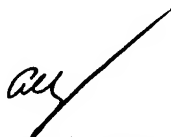
17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T. Blake whose telephone number is (571) 272-4503. The examiner can normally be reached on Monday to Friday, 8:00 AM to 5:30 PM, alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CB

CB
July 21, 2005



Allan N. Shoap
Supervisory Patent Examiner
Group 3700